Supreme Court, U.S.
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No. 92-944

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1992

M. WILEY CATLETT, "the Heir"
OF THE ESTATE OF ERNEST
LUTHER CATLETT, DECEASED PETITIONER,

vs.

JOHNNY W. RICHARDS, II, INDIVIDUALLY, and as SUCCESSOR DEPENDENT ADMINISTRATOR OF THE ESTATE OF ERNEST LUTHER CATLETT, DEC'D., FLORENCE IONA CATLETT, ROBERT M. BURNETT, JUDGE, PROBATE COURT NUMBER ONE, TARRANT COUNTY, TEXAS RESPONDENTS

PETITION FOR WRIT OF CERTIORARI
TO THE SECOND COURT OF APPEALS
DISTRICT OF TEXAS THROUGH
THE SUPREME COURT OF TEXAS

PETITIONER'S REPLY TO BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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PETITIONER'S REPLY TO BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

TO THE HONORABLE SUPREME COURT OF THE UNITED STATES:

Contrary to Respondent, Hon. Robert M. Burnett (see cover) this is not a matter "On Petition For Writ of Certiorari To The United States Court of Appeals For The Fifth Circuit."Petitioner, M. Wiley Catlett, the Heir, respectfully prays that a writ of certiorari issue to review the Opinion and

Judgment (APPENDIX "E") unpublished without any date of signing as such by Justice Sam Day, TEX.R.CIV.PROC.,R.306a & 329b,subd. 5, Ex Parte Godeke (TEX.SUP.CT. 1962) 355 SW2d 701. "STAMPED" at the bottom: FEB. 25, 1992, in the Second Court of Appeals District of Texas dismissing Petitioner's appeal relying "only" on Florence Iona Catlett's , "Flo", Motion to Strike and for Damages filed in this action on FEB. 7, 1992 (late). The transcript was filed by the Probate Court Clerk on JAN. 3, 1992, R.1)

Respondent, "Flo's" Motion to Strike the whole pleadings is in effect a general demurrer. City of Brownville v. Galvan, 139 TEX. 128, 162 SW2d 98 (1942). The use of a general demurrer has been eliminated from TEXAS PRACTICE; BANKER v. JEFFERSON COUNTY NO. ONE 277 SW2d 130 (TEX.CIV.APP. 1950) n.w.h.; RULE 90 TEX.R.CIV.PROC.

Therefore, "Flo's" motion to strike and for damages is null and void, as is Justice

Day's FEB. 25, 1992 Opinion; since he based his opinion on Flo's null & void motion.

> "But if it act without authority, its judgments and orders are nullities, they are not voidable, but simply void, and form no bar to a recovery sought, even prior to a reversal . . . " ELLIOTT v. PERIRSOL. 1828, 1 Pet 328, 7 L.Ed. 164 at 170."

Further, "the Heir's", Petition for Writ of Certiorari to The Second Court of Appeals District of Texas at Fort Worth, Texas was filed with the Supreme Court of the United States by placing 40 copies of same and the Appendix in the Deerfield, Illinois U. S. Post Office via FIRST CLASS MAIL with postage prepaid on NOVEMBER 24, 1992. The same was docketed by Loretta S. Ruffin, Assistant Clerk on NOV. 30, 1992 as No.92-944. Three copies of the Petition and the Appendix were mailed to each of the Respondents or their attorneys of record via the Two Day Priority Mail of the U. S. Postal Service on NOV. 24, 1992.

Therefore, Judge Burnett's Brief in Opposition was due on DEC. 24, 1992 or at the latest, DEC. 30, 1992. Not on JAN. 4, 1993 as shown on his cover page. Resultingly, Respondent has failed to comply with the RULES of the SUPREME COURT of the UNITED STATES, R. 15.2 (JAN. 1, 1990)

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JURISDICTION

While Judge Burnett does not challenge the timeliness of the "Heirs" Petition, he does challenge the fact that "This Court's" jurisdiction is invoked under Title 28 U.S.C. Sect. 1257(a); HOWLETT v. ROSE, (1990) 496 US 356, 110 L.Ed.2d 332 at 335, 110 S.Ct. 2430, citing jurisdiction under 28 U.S.C. Sect. 1257(a) and on p. 347 of a 27 page Report the Court states: "The laws of the United States are laws of the several States and just as much binding on the citizens and Courts thereof as the State laws are." ; Cipollone, Ind., & as Executor of the estate of Cipollone v. Liggett Group, Inc., et al (1991) 500 US ___, 120 L.Ed.2d 407, at 418, 112 S.Ct. ___ Certiorari to the United States Court of Appeals for the Third Circuit, because of the manifest importance of the issue, we granted certiorari to resolve the conflict."

Hence, the "heir's" Petition for Writ of Certiorari to the Second Court of Appeals District of Texas (the state court of last resort) is correct, " . . . where any title, right, privilege or immunity is specially set up or claimed under the Constitution . . . "

See the QUESTIONS PRESENTED on pages i thru iv in the "Heir's" petition.

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STATEMENT OF THE CASE

Tim Curry, Criminal District Attorney of Tarrant County, Texas an employee of the State of Texas who represents Judge Burnett the Probate Court No. 1 judge, Tarrant County, Texas, also on the payroll of the State of Texas and who is charge with extrinsic fraud in this matter outside of his immunity; hence, Time Curry has a conflict of interest. DENNIS v. SPARKS (1980) 449 US 24, 66 L.Ed. 185, 101 S. Ct. 183. Action against private parties who allegedly conspired with state judge, held maintainable despite Judge's immunity (Unanimous Court) ; WOOD v. GEORGIA (1981) 450 US 261, 67 L.Ed.2d 220, 101 S.Ct. 1097 where the record suggested conflict of interest.

Further, Tim Curry, Criminal District Attorney of Tarrant County, Texas contradicts himself on pages 3, lines 6 & 7 and 4, lines 6 & 7 also: "Petitioner's Motion for Rehearing was denied by Order, dated July 23, 1992." Fact is that Tim Curry was correct on page 3, (APPENDIX "A", SEP. 9, 1992.) The record will show that Tim Curry for Judge Burnett has misapprehended many facts in this matter, for example:

a) - In his June, 9, 1992 brief he questioned the "Heir's" correctness in his jurisdictional statement to the Texas Supreme Court.

The "Heir" said: " "The Supreme Court of Texas has jurisdiction of this action under subsection (a)(6) of section 22,001 of the Government Code, or subsection (d)."

And the "Heir" said: "See the EXAMPLE in (d) - Statement of Jurisdiction, R.APP. PROC., Rule 131, p.519 thereof."

b) - Contrary to Tim Curry the "Heir" did file about seven (7) affidavits in this action - the "heir" listed each document & the date in his "Motion for Rehearing" of

July 7, 1992 which was sworn to.

c) - Further, contrary to Tim Curry the "Heir" did offer a great deal of circumstancial evidence which proved, for example, that Successor Adm., Richards" had failed to file a "REPORT OF SALE" (V.A.T.S.,ProbC., Sect. 353, see Docket Sheets (R.5) and that "Richards" bond of $8,000 was not increased on sale of land for about $77,560.66,V.A.T.S. ProbC.,Sect.354 (PR AFFIRM, her #3, my #6, & her #4, my #7 (R.134)

d) - Further, contrary to Tim Curry the "Heir" in his "Motion for Rehearing" , did include each and every POINT OF ERROR to the Supreme Court of Texas & did make reference to those facts in his brief to the Supreme Court of Texas.

e) - Further, contrary to Tim Curry in his footnote 1 on page 2 and in the STATEMENT OF THE CASE on p. 3 and in A. on page 4, Judge Burnett is a necessary party and was served by the Probate Clerk, one of three officers Texas law empowers to serve

process, the other two being the sheriff and constable. TEX.R.CIV.PROC.,R. 103; See generally LONDON v. CHANDLER, 406 SW2d 203 (TEX. 1966), writ.r.n.r.e.; SNELL v. KNOWLES, 87 SW2d 871 (Tex.Civ.App. 1935)

In Judge Burnett's case service was made through the Probate Court Clerk, Judy Duncan, file marking (OCT. 16, 1991) the "Heir's" list of documents, some 79, (R.288) No.2-91-213-CV(No.77-2726-1 below) In The Court of Appeals For The Second Supreme Judicial District of Texas at Fort Worth which showed Judge Burnet as one of the Appellees in that appeal of Judge Burnett's final "ORDER CLOSING ESTATE AND DISCHARGING PERSONAL REPRESENTATIVE" signed August 6, 1991 by lining out "February" without his initials.(R 276,Item#1), and placing those seven pages file marked (OCT. 16, 1991) in an envelope addressed to Judge Robert M. Burnett, Probate Court Number One, Tarrant County Courthouse,Fort Worth,Tx. 76196-0401 and mailing same to the Judge FIRST CLASS with postage prepaid & with return address.

f) - On FEB. 21, 1992, Tim Curry filed Judge Burnett's "Motion to Join in Motion (of "FLO'S") and to Adopt Brief's of "FLO'S".

Hence, the record will show that Tim Curry's appearance before Yvonne Palmer, Clerk for the Court of Appeals in Ft. Worth on FEB. 21, 1992 to file Judge Burnett's motion cured any alleged personal jurisdictional problem. YORK v. STATE of TEXAS, 137 US 15 at p.16, 34 L.Ed. 604 at p.605, 11 S.Ct. 9; TEX.R.CIV.P.,Rule 121 (Reply to Curry's REASON "A", page 4 of Opposition Brief)

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B. FAILURE TO PRESERVE A SUBSTANTIAL FEDERAL QUESTION - pages 5 & 6

First, the record will show that the "Heir" did indeed preserve QUESTION " I ", "Did the State of Texas through its Probate System and Judge Burnett and Successor Admin. Richards have a right to sell some 39 acres from the "Heir's" grandfather's and grandmother's 225.1 acre farm near Aubrey, Texas purported to belong to the estate of Ernest without any "NOTICE" or "HEARING" to the real

owner, "the Heir", M. Wiley Catlett, a citizen of the State of Illinois; thereby, divesting "the Heir" of the title to that land which vested in "the Heir" at the intestate's death (his father, Ernest on 6-1-77), thus depriving "the Heir" of his property (that land) without "due process of law" in violation of the 5th and 14th Amendments of the Federal Constitution and yes, even of the Constition of Texas, Art. I, Sect. 19. READ v. GEE (Tex.Civ.App.,Ft.Worth 1977) 551 SW2d 496 at 498 whereChief Justice Massey held: that judgment order would be reversed for want of due process of law in proceedings at which it was rendered." U.S C.A.Const. Amends, 5, 14; Vernon's Ann.St. Const., art. 1, Sect. 19, RNRE

The Supreme Court of the United States in WOLFF v. McDONNELL (1974) 418 US 539, 43 L.Ed.2d 935, 94 S.Ct. 2963 at 952 held: "The touchstone of due process is protection of the individual against arbitrary action of government."; MULLANE v. CENTRAL HANOVER TR. CO. 339 US 306, at 313, 94 L.Ed. 865 at 872, 70 S.Ct. 652.

The Supreme Court of Oklahoma held in SEAL v. BARNES (OKLA.SUP.CT. 1934) 168 OKLA 550,35 P2d 704 at pp.713 & 714: "Since a sale of real estate by an administrator divests the heir of the title which vested in them at the intestate's death, an order for such sale can only be made after notice to

the heir's, otherwise, the property would be taken without due process of law and therefore . . . is absolutely void, and deprives them of due process of law in violation of the Fourteenth Amendment to the Federal Constitution."

Further, the record will show that Tim Curry either failed to read the "Heir's" "Brief for Appellant" filed in No. 2-91-213-CV on FEB. 3, 1992 or he is attempting to deliberately mislead THE SUPREME COURT of the UNITED STATES when he states: "None of the Points of Error presented by Petitioner to The Court of Appeals related to any denial of federally protected rights." See POINT OF ERROR NUMBER THREE, page vi & pages 24 & 25 thereof which cites: SEAL v. BARNES (OKLA. SUP.CT.1934) 168 OKLA 550, 35 P2d 704 at 713-714; FUENTES v. SHEVIN (1972) 407 US 67, 32 L.Ed.2d 556, 92 S.Ct. 1983, reh.den. 409 US 902, 34 L.Ed.2d 165, 93 S.Ct. 177, at p. 569 where THE U. S. SUPREME COURT stated: "(3,4) . . . Parties whose rights are to be affected are entitled to be heard; and in order that they may enjoy that right they must first be notified." BALDWIN v. HALE, 68 US 223, 233, 17 L.Ed. 531, & other cites . . . It is equqlly fundamental that the right to notice and an opportunity to be heard " must be granted at a meaningful time and in a meaningful manner." (Brief for Appellant, FEB. 3, 1992, page 25 therein.)

Tim Curry representing Judge Burnett is partially correct on his page 5 where he states: " For example, Petitioner contended that various orders endtered in 1981 and 1982 of the probate court were void because of the lack of a proper legal description."

Petitioner's QUESTION V PRESENTED, pp. iii & iv in his petition specificially identifies those orders and judgments which he proves are null and void due to their insufficient legal descriptions of the land (APPENDIX "M") placed therein by "Flo's" attorney, John R. Lively for the various judges to sign.

However, Tim Curry is incorrect in saying that those null and void orders & judgments are now barred by res judicata, see

AUGUST KERN BARBER SUPPLY CO. v. FREEZE (TEX.SUP.CT. 1903) 96 TEX. 513, 74 S.W.2d 303 at 304, "1. decisions in Railway Company v. Ware, 74 TEX. 47, 11 S.W. 918 and Edrington v. Allshbrooke, 21 TEX. 186, are authority for the proposition that the enforcement of a judgment may be enjoined when, by the face of the record upon which it was rendered, it is shown to be void . . . The judgment being a mere nullity andopen to collateral attack, any attempt by process based upon it, to

reach the property of the person against whom it is rendered, is an unlawful invasion of the rights of property, against which, in the absence of other adequate remendy, he is entitled to injunction." ; PAUL v. WILLIS (TEX.1887) 69 TEX.261, 7 S.W. 357 at 359.

"If the points made against the judgment are such as go to the validity of the same, it cannot be argued with any show of success that they should have been presented on the original trial. It is futile to contend that a void judgment is res adjudicta as to anything. If a judgment is void, then it is an absolute nullity, and may be assiled at any time or place, either directly or collaterally . . . parties cannot by any acts, however, negligent, lose right to assil void judgment." WHITE v. HIDALGO COUNTY WATER IMPROVEMENT DIST. NO.2(TEX.CIV.APP.1928) 6 SW2d 790 at 791; FULTON v. FINCH (TEX.SUP.CT.1961) 162 TEX.351, 346 SW2d 823 at 827

Further, the U. S. SUPREME COURT, RULE, 24 states: "At its option, however, the Court may consider a plain error not among the questions presented but evident from the record and otherwise within its jurisdiction to decide."

C. NO CONFLICT WITH EXISTING AUTHORITY - page 7

Again, contrary to Judge Burnett's attorney, Tim Curry, the Chief Criminal District Attorney of Tarrant County, Texas the record shows a conflict of interest in his representing Judge Burnett in this action where Judge Burnett is also on the payroll of the County of Tarrant, State of Texas and who is charged with extrinsic fraud which occurred outside of the judges immunity.

Further, (see pages 8 & 9 herein) Judge Burnett was properly served through the Clerk of the Probate Court, one of the three officers Texas law empowers to serve process, the others being the sheriff and constable. TEX.R.CIV.PROC., R. 103 & 106.

And again, (see pages 9, 10 & 11 herein) contrary to Tim Curry, the "Heir" has shown & the record shows, in his Petition and at every stage of this action that there are conflicts with the rulings of the Supreme Courts of other states and also with existing U. S. SUPREME COURT authorities.

C O N C L U S I O N

For the reasons set forth above and those reasons set forth in the record a Petition for writ of certiorari should issue to review the judgment and opinion (APPENDIX "E") of the Second Court of Appeals District of Texas at fort worth, Texas.

a) - To explicitly rule on an issue of manifest importance, whether the State of Texas' Probate Court system has a right to sell some 39 acres purported to belong to Ernest' Estate without any "notice" or "hearing" to the real owner of that land, "the heir", M. Wiley Catlett, an Illinois citizen; thereby, divesting "the heir" of the title which vested in the "heir" at the intestate's death (Ernest's on 6-1-77), hence, depriving "the heir" of his property (that land) without "due process of law" in violation of the 5th & 14th Amendments of the Federal Constitution.

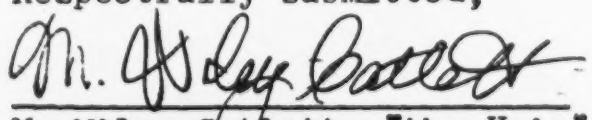
b) - To review the judgment and opin-

ion of the Second Court of Appeals District of Texas (the State Court of last resort) which conflicts with the decisions of the Supreme Court of another state and with The SUPREME COURT of the UNITED STATES on the same federal question. Yes, even with the decision of former Chief Justice Massey of that same district in READ v. GEE, (TEX.CIV. APP. Ft. Worth - 1977) 551 SW2d 496 at 498.

c) - To review the judgment & opinion of that Second Court of Appeals District of Texas whose decision has so far departed from the accepted andusual course of Judicial proceedings, as to call for an exercise of this Court's power of suppervision.

DATED: JANUARY 13 , 1993.

Respectfully submitted,



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